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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11
12 SHELLEY R. ROBINSON; and
ELIZAVETA M. HUNSINGER, by and
13 through her Conservator IVAN J.
HUNSINGER

14 Plaintiffs,

15 v.

16 DAIMLERCHRYSLER AG;
17 DAIMLERCHRYSLER MOTORS
COMPANY LLC; DAIMLERCHRYSLER
18 CORPORATION; and DOES ONE through
FIFTY, inclusive,

19 Defendants.
20 _____/

Case No. C 07-03258 SC

OPPOSITION TO MOTION FOR
ADMINISTRATIVE RELIEF REGARDING
EXPERT WITNESS DISCLOSURES AND
DISCOVERY

[Civil Local Rule 7-11]

21 **I. INTRODUCTION**

22 Chrysler's motion was made without meeting and conferring or even notifying Plaintiffs'
23 counsel about a critical issue raised in their motion concerning the close of non-expert discovery.
24 They request the close of non-expert discovery to be set for July 3, 2008, which would only give
25 the parties three months to complete it. This early date would be extremely prejudicial because
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1 Plaintiffs will not have sufficient time to complete discovery. The fact that counsel for Chrysler
2 never raised this issue during the meet and confer, proposed in their letter that the close of non-
3 expert discovery would be November 12, 2008, and now requests a July 3, 2008 cut-off date in
4 their motion is an abuse of Civil Local Rule 7-11.

5 Furthermore, their entire proposed schedule unfairly advantages Chrysler. It gives
6 Chrysler 32 days to rebut Plaintiffs' experts, yet only gives Plaintiffs 21 days to rebut Chrysler's
7 experts. It also requires Plaintiffs to disclose expert reports for issues on which they have the
8 burden, but would not require Chrysler to disclose expert reports for issues on which they have
9 the burden. None of Chrysler's requests should be granted.

11 II. FACTS

12 This case arises out of a single vehicle accident that occurred on May 25, 2005 on
13 Highway 93 near Twin Falls, Idaho, when the 1998 Jeep Cherokee in which Plaintiffs were
14 passengers oversteered, yawed, and rolled over. Plaintiffs claim that the vehicle was defective
15 (1) in its handling and stability, (2) for not having electronic stability control, (3) for having a
16 weak roof, and (4) for having inadequate glazing. These claims are known to Chrysler. (See
17 Gherini Decl. at ¶4).

18 Counsel for both parties met and conferred regarding the scheduling of expert discovery,
19 beginning in September, 2007. (See Van Blois Decl. at ¶1.) The parties included this issue in
20 their Joint Case Management Statement. At the hearing, however, the issue was not raised and
21 the Court did not establish a schedule for expert discovery in the Status Conference Order. (See
22 Van Blois Decl. at ¶1.) The Court ordered the close of all discovery by November 12, 2008.
23 Plaintiffs have relied on this cut-off date in their discovery planning. (See Van Blois Decl. at ¶5.)

24 On March 26, 2008. The parties met and conferred telephonically regarding the timing of
25 expert disclosures. (See Van Blois Decl. at ¶2.) On the same day, defense counsel sent a meet
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1 and confer letter, and asked for a response by March 31. (See Ex. A to Gherini Decl.) On March
2 31, Plaintiffs' counsel sent a written response. (See Ex. B to Gherini Decl.) Defense counsel
3 mentioned that they would seek court assistance to resolve the expert discovery scheduling if an
4 agreement was not made. Defense counsel did not mention that they would also ask the Court to
5 move the non-expert discovery cut-off date by over four months. (See Van Blois Decl. at ¶4.)
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7 **III. ARGUMENT**

8 **A. The cut-off date for non-expert discovery should remain at November 12, 2008.**

9 Chrysler provided *no argument* in their moving papers in support of their request to move
10 the date for the close of non-expert discovery ahead by over four months to July 3, 2008.
11 Chrysler did not meet and confer regarding this issue, and they did not inform Plaintiffs that they
12 would ask for this relief. By slipping this request in their motion, Chrysler is abusing Civil Local
13 Rule 7-11. This is sufficient reason to deny the relief requested.

14 Plaintiffs would be severely prejudiced if the cut-off date for non-expert discovery is
15 moved to July 3, 2008. Plaintiffs' counsel has relied on the November 12, 2008 cut-off date in
16 their discovery planning, and they would have inadequate time to complete non-expert discovery
17 if the cut-off date is moved ahead by four months. At this time, the parties are still waiting for
18 the Court to sign the protective order that the parties agreed to, and Chrysler has not completed
19 their initial disclosures. (See Van Blois Decl. at ¶5.) Products liability cases with automobile
20 manufacturers are fraught with disputes that require law and motion work and significant delay.
21 By asking the Court to change the cut-off date for non-expert discovery, Chrysler is attempting to
22 prevent Plaintiffs from obtaining discovery about their automobile. From this day, Plaintiffs
23 would only have three months to complete discovery, when they have been planning on having
24 seven months from this day pursuant to the Court's January 25, 2008 Status Conference Order.
25 During these three months, Chrysler will delay discovery responses, refuse to produce certain
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1 categories of documents, oppose motions, delay depositions of the PMK witnesses, and send the
2 wrong PMK witnesses who have limited knowledge of the subject matters at issue, requiring
3 further meet and confer, and potential additional law and motion work. (See Van Blois Decl. at
4 ¶5.) This would be unduly prejudicial to Plaintiffs who would be denied their right to discovery
5 in this case. Chrysler should have made this request at the status conference instead of waiting
6 until three months before their requested cut-off date.

7 **B. The date for expert disclosure should be later than the one proposed by Chrysler.**

8 Plaintiffs would be similarly prejudiced if the date for expert disclosures is moved ahead
9 to July 3, 2008. Chrysler admits that the default date for expert disclosures is 90 days before
10 trial, which in this case would be October 14, 2008. FRCP 26(a)(2)(C)(i). (See Motion at 2:25-
11 26). Plaintiffs have relied on this date, or a date reasonably close thereto, as the date for expert
12 disclosures. Plaintiffs have informed Chrysler that they would stipulate to change the disclosure
13 date to September 12, 2008. However, to change the disclosure date to July 3, 2008 would be so
14 distant from the Court's Order that it would completely change all of Plaintiffs' litigation
15 planning. Chrysler should have made this request at the status conference instead of waiting
16 until three months before their requested disclosure date.

17 Chrysler has not provided adequate justification for their request for over four months of
18 expert discovery. In State Court, the parties only have 50 days to complete expert discovery,
19 which may be completed all the way up to the trial date. C.C.P. §2034.230(b). Here, Plaintiffs
20 will stipulate to allow 60 days of discovery which would be completed two months before trial.
21 This is a sufficient relaxation from the more rigorous requirements in State Court that defense
22 counsel has complained of, and it is sufficient time to complete expert discovery.

23 **C. Expert disclosure should be simultaneous.**

24 FRCP 26 contains no requirement for staggered disclosure of experts. The best argument
25 that Chrysler can make is that the staggered disclosure of experts may be ordered at the Judge's
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1 discretion, requiring the party with the burden of proof on a particular issue to disclose their
 2 expert reports first. The first fallacy with that argument is that Chrysler has the burden of proof
 3 on design defect issues, not Plaintiffs.

4 "Once the plaintiff makes a prima facie showing that the injury was proximately
 5 caused by the product's design, the burden should appropriately shift to the
 6 defendant to prove, in light of the relevant factors, that the product is not
 defective." Campbell v. General Motors Corp. (1982) 32 Cal.3d 112, 118 (quoting
Barker v. Lull Engineering Co. (1978) 20 Cal.3d 413, 431.

7 Indeed, a prima facie case of causation may be established without any expert testimony,
 8 See Campbell v. General Motors Corp. (1982) 32 Cal.3d 112, and it certainly may be established
 9 without expert reports and expert depositions. Therefore, under Chrysler's reasoning, Chrysler
 10 would have to disclose their experts first.

11 The second fallacy with Chrysler's argument is that they already know what Plaintiffs'
 12 claims are, so there is no need for a staggered disclosure. They know the claims are for defective
 13 handling and stability, failure to have ESC, defective roof, and defective glazing. If there is some
 14 aspect of these claims that they were previously unaware of, they will have the ability to disclose
 15 supplemental reports and/or rebuttal experts. If Chrysler is searching for another way to narrow
 16 issues, a better way to do this would be to schedule an interim pretrial conference before the
 17 disclosure date. This would prevent Chrysler from obtaining the unfair advantage they are
 18 seeking in asking that Plaintiffs disclose their expert reports before Chrysler discloses theirs.

19 20 IV. CONCLUSION

21 The Court should deny all relief requested in Chrysler's motion and order that the date for
 22 the disclosure of experts is September 12, 2008.

23 Dated: April 4, 2008

VAN BLOIS & ASSOCIATES

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25 Darren J. Van Blois,
 26 Attorneys for Plaintiffs